Supreme Court, U.S.
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No. 94-829

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

GERHARD LANGGUTH..... *Petitioner*

vs.

W. J. McCUEN, Secretary of State
of Arkansas..... *Respondent*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

J. WINSTON BRYANT
Arkansas Attorney General

By: *ANN CHRISTINE PURVIS
Assistant Attorney General
Arkansas Bar No. 88153
200 Tower Building
323 Center Street
Little Rock, Arkansas 72201
(501) 682-3665

Attorneys for Respondent

*Counsel of Record

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Respondent responds to petitioner's petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit.

JURISDICTION

Respondent acknowledges that this Court has discretionary jurisdiction to review this case pursuant to 28 U.S.C. § 1254(a).

STATEMENT OF THE CASE

Petitioner Gerhard Langguth filed a complaint in the United States District Court, Eastern District of Arkansas, seeking a preliminary injunction, a permanent injunction and declaratory relief concerning the constitutionality of Ark. Code Ann § 7-7-103 as it pertains to ballot access of independent candidates in state-wide general elections. In particular, Mr. Langguth submitted to respondent McCuen, as Secretary of State of Arkansas, petitions to have his name printed on the ballot for the U.S. Senate general election in 1992. Respondent McCuen rejected the plaintiff's petition containing 5,004 signatures which were not verified by the Secretary of State's Office.

The district court dismissed petitioner's complaint. The United States Court of Appeals for the Eighth Circuit affirmed the district court.

REASONS FOR DENYING WRIT

I.

CERTIORARI SHOULD BE DENIED BECAUSE ARKANSAS' STATUTES REGULATING ACCESS TO THE BALLOT FOR INDEPENDENT CANDIDATES FOR A STATE-WIDE ELECTION DO NOT VIOLATE THE FIRST AND FOURTEENTH AMENDMENTS.

This case involves the constitutionality of a state election law restricting access to the ballot. Art. 1, Section 4 of the United States Constitution gives broad authority to the states to prescribe "the times, places and manner of holding elections for senators and representatives." It is the duty of the states to regulate the elections. "[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the Democratic process." *Storer v. Brown*, 415 U.S. 724, 730 (1974). Every provision of a regulation will affect in some manner an individual's right to vote and his right to associate. "Nevertheless, the state's important regulatory interests are generally sufficient to justify reasonable, non-discriminatory restrictions." *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983).

This Court has recently reiterated the foregoing reasoning and rejected a strict scrutiny standard when reviewing an election regulation. To require such a standard would improperly "tie" the hands of the state seeking to assure that elections are operated equitably

and effectively. *Burdick v. Takushi,* 504 U.S. ____, 112 S.Ct. 2059, 2063 (1992).[1]

However, the Eighth Circuit Court of Appeals applied a strict scrutiny analysis in the present case and found that the precise interests advanced by the State – a candidate must show a modicum of support before printing a candidate's name on the ballot, and in having enough time both to certify that the names on the petition are registered voters and to permit the authenticity of the signatures to be challenged in court – are compelling. Contrary to petitioner's contention this Court has never held a State "to the burden of demonstrating empirically the objective effects on political stability that [are] produced. *Munro v. Socialist Workers Party,* 479 U.S. 189, 195 (1986) as cited in *Burson v. Freeman,* 112 S.Ct. 1846, 1856 (1992).

Before this Court, petitioner seeks review of the state's requirement of the May 1st filing deadline. Petitioner suggests that the decision in this case is in conflict with the Eleventh Circuit decision in *New Alliance Party of Alabama v. Hand,* 933 F.2d 1568 (11th Cir. 1991). The Eleventh Circuit held that the interest advanced by the state did not justify a filing deadline of April 6 for new political parties. The obvious distinction in the cases is that the present case involves an independent candidate's access to the ballot not new political parties. Also each state has developed fifty different complex

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[1]The petitioner has raised before this Court an issue of minor political party access to the ballot. That issue was not raised in the district court below nor decided on appeal by the Eighth Circuit, therefore, that issue is not properly before this Court.

regulatory schemes and a court must review each scheme separately.

The petitioner also contends that the Eighth Circuit failed to follow this Court's decision in *Mandel v. Bradley,* 432 U.S. 173 (1977). As previously argued each state's statutory scheme and political atmosphere must be analyzed pursuant to *Anderson v. Celebrezze,* 460 U.S. 780 (1983). The Eighth Circuit applied the *Anderson* test. The *Mandel v. Bradley* decision would not alter that analysis.

CONCLUSION

The Court of Appeals for the Eighth Circuit properly decided that Arkansas' statutory scheme for ballot access of independent candidates for state-wide elections is constitutional. The Rules of the Supreme Court state that review on writ of certiorari will only be granted when there are special and important reasons therefor. This case contains no issue worthy of such a review. The point raised by the petitioner does not demonstrate that constitutional error has occurred. Therefore, for the reasons and authorities cited above, respondent respectfully requests this Court to deny review on writ of certiorari.

Respectfully submitted,

J. WINSTON BRYANT
Arkansas Attorney General

By: *ANN CHRISTINE PURVIS
Assistant Attorney General
Arkansas Bar No. 88153
200 Tower Building
323 Center Street
Little Rock, Arkansas 72201
(501) 682-3665

Attorneys for Respondent

*Counsel of Record